IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1929 OF 2006

1. Smt.Saminussa Tawakal Hussein
Plot Nos.11 and 12 ..

2. Jaffar Ali Abdul Jaffar
Plot No.15A ..

3. Mohd. Ishaq Kasam Ali
Plots Nos.13 and 14B ..
All Adults, Indian Citizens,
carrying on Business at
K.S.Nagar, Western Express
Highway, Dahisar Check Naka,
Dahisar (West),
Bombay 400 068 .. Appellants.

Vs.

1. The Municipal Corporation of
Greater Bombay
Greater Bombay, having its
office at Mahapalika Bhavan,
Mahapalika Road,
Mumbai 400 001. ..

2. KAY KAY Enterprises, having
its office at Survey No.96,
Hissa No.1, K.S.Nagar, Western
Express Highway, Dahisar Check
Naka, Dahisar (West),
Bombay 400 068 .. Respondents.

Mr.G.S.Godbole for the appellants.
Mr.J.J.Xavier for the respondent-corporation.

CORAM : D.B.BHOSALE, J.

DATED : 20TH DECEMBER, 2006

ORAL JUDGMENT:

. The judgment and order dated 12.6.2006 rendered by the City Civil Court, Bombay in L.C.Suit

No.5088 of 2000, instituted by the appellants, is under challenge in the instant first appeal. By consent of the learned counsel for the parties the appeal is taken up for final disposal at the stage of admission. The parties have placed all the relevant material before me consisting of the pleadings, notes of evidence and all the documents relied upon by them before the trial Court. I heard Mr.Godbole, learned counsel for the appellant for quite sometime and Mr.Xavier, learned counsel for the Corporation.

2. By the impugned judgment, the suit instituted by the appellants challenging the notices under section 314 of the Mumbai Municipal Corporation Act, (for short "the Act") issued against them dated 26.8.2000 and 24.8.2000 has been dismissed by the trial Court. All the three appellants claim that they are in possession of the structures in dispute as tenants of M/s. Kay Kay Enterprises. The disputed structures stand on plot nos. 11, 12, 13, 14-B, and 15-B, Survey No.96, Hissa No.1, situate at K.S.Nagar, Western Express Highway, Dahisar, Mumbai. The case set up by the appellants is that they are monthly tenants of Kay Kay Enterprises and they were put in possession of the aforesaid plots sometime in 1983 where they erected the disputed structures admeasuring about 11’ X 50’ in the very same year. According to

the respondent-corporation, the disputed structures are on 44’ wide proposed D.P.Road. The D.P.road, according to the corporation, is developed all throughout except the portion on which disputed structures stand. The corporation claim that they have acquired the land on which the structures in dispute stand and they were put in possession thereof in March 1991. Since the structures are obstructing development of the D.P. road the impugned notices under section 314 of the Act were issued. The appellants on receipt of the notices rushed to the court and filed L.C. Suit No.5088 of 2000 which came to be dismissed vide judgment dated 12.6.2006.

3. With the assistance of the learned counsel appearing for the parties I went through the evidence of all the witnesses examined by the appellants and the corporation, the pleadings and the documents placed on record including the map relied upon by the corporation to show that the disputed structures are on D.P. road. Mr.Godbole, learned counsel for the appellants after inviting my attention to the pleadings submitted that the suit could not have been dismissed on the facts as they appear. He submitted that the corporation has not produced any material on record to show that the plots of land on which disputed structures are standing was ever acquired by

the corporation. In support of this submission he invited my attention to the cross examination of P.H.Wagh, Junior Engineer, examined by the corporation to contend that the said witness has not produced any material on record to prove that the land was ever acquired by the corporation for construction of D.P. road. He submitted that there is nothing on record to show that there was vesting of the land and, therefore, corporation had no power to issue notice under section 314 of the Act. He then submitted that the land in dispute does not form a part of public street and in any case notice under section 314 is illegal since "public street" as defined under section 2(x) of the Act does not exists. My attention was also drawn to the evidence of all the plaintiffs to submit that the disputed structures are not situated on any street and that notice under section 314 was vague and did not give description of the land, area of the structure etc. He also pointed out from the examination in chief of Jaffarali Abdul Jaffar, appellant no.2, that the Corporation has not acquired land below the structure and have not followed procedure under M.R.T.P.Act.

4. From perusal of the evidence of appellant nos.2, 3 and the husband of appellant no.1 it is clear that all three appellants were put in possession of

the disputed plots sometime in 1983 and after getting possession thereof the suit structures were erected thereon. It is also clear and not been disputed by the learned counsel for the appellants that when the disputed structures were erected no permission whatsoever was obtained from the Corporation. Though, in the pleadings, they have denied that the structures are illegal, from bare perusal of the aforesaid admissions it is clear and the court below has rightly held that the disputed structures are unauthorised. Mr.Godbole, learned counsel for the appellants could not and did not dispute this fact. He submitted that the present proceedings arise out of notice under section 314 and not under section 351 of the Act, and therefore, whether structures are unauthorised has no relevance. However, the fact remains that they are unauthorised. In view of this I proceed to examine the submission of Mr.Godbole that the land has not been acquired at all.

5. Junior Engineer - Wagh, examined by the Corporation, clearly stated in the examination-in-chief that the disputed structures are situated on the portion of 44’ wide D.P. road. The said portion of the land had been acquired and handed over to the Corporation in March, 1991. He produced certified copy of the possession report and certified

copy of the property card which was marked as Exhibit "1" and "2". He further stated that the disputed structures were illegal and unauthorisedly erected without permission of the Corporation on D.P. road and hence the notices under section 314 of the Act were issued. He also denied that the appellants are entitled for alternate accomodation since they are not covered by the policy of government. It is very pertinent to note that in the cross examination though this witness could not give further particulars, his statement that the land is acquired by the Corporation for construction of 44' vide D.P. road was not challenged at all. The only admission elicited from this witness in the cross examination, insofar as acquisition of the land is concerned, was that he had not seen the award for acquisition. As a matter of fact in the cross examination he re-affirmed that the Corporation took possession of the land from S.L.A.O. No.7 on 27.3.1991. It is true that he expressed his ignorance as to when the possession was taken by S.L.A.O. of the land. But that by itself would not mean that there is no acquisition as argued by Mr.Godbole. It cannot be overlooked that this witness has specifically denied that the structure in dispute did not stand on the D.P. road. As against this the husband of appellant no.1 clearly stated in his cross examination that no permission of the Corporation

while erecting the suit structure in 1983 was sought and that he is not having license under section 394 of the Act. Similarly, appellant no.3 in cross examination has clearly stated that he was not aware whether the Corporation acquired the land on which the suit structure is standing for the purpose of road widening. He has also fairly stated that he does not possess licence under section 394 of the Act. Appellant no.2 also in the cross examination has stated that he was not aware whether permission of the defendant-corporation was obtained for construction of the suit structure and that he was not aware whether land upon which the suit structure stands was acquired by the corporation for D.P. road. It is thus clear that the case of the corporation of acquisition had not been challenged by the appellants at all. In view thereof merely because the Corporation failed to place a copy of the award or any other document in support of the acquisition it cannot be held that the land was not acquired and, therefore, notice under section 314 is wrong and illegal. Even if the corporation failed to place a copy of the award on record their witness has clearly stated that the corporation had taken possession of land from S.L.A.O. on 27.3.1991 and it was not challenged by the appellants. A letter on record at Exhibit "I", of the appellants to the Corporation, on the contrary state that even if any

portion of the structure is taken for the road they may be given additional F.S.I. as per the policy of the Corporation. In the circumstances the main submission of Mr.Godbole must be rejected.

6. The next submission of Mr.Godbole that no street as defined under section 2(x) exists and that the land on which disputed structures stand does not form a part of public street also deserves to be rejected outright. It is clear that the suit structures are on the proposed D.P. road and most of the portion of road has already been constructed except few patches of the land, such as the plots of land in question, since they are occupied by the unauthorised structures. The Supreme Court had an occasion to deal with similar situation in **Municipal Corporation of Gr.Bombay Vs. Premnagar Zopadpatti Committee Society and Anr, 1991 Supp (2) Supreme Court Cases 712**. **In** that case, similar contentions were raised before the High Court and the High Court had granted interim injunction restraining the corporation from evicting the respondents from the land in dispute in the proceedings under sections 313 and 314 of the Act. While dealing with the appeal against the order of the High Court, the Supreme Court in paragraph 5 made the following observations:

> "5. After hearing learned counsel for the parties, we are of the opinion that the view taken by the High Court that the land was not a public place although it had been acquired for purpose, therefore no proceedings under Section 313 and 314 of the Act could be taken against the respondents is erroneous in law. The land which had been acquired for the public purpose by the Corporation is a public place and any encroachment made on that land by any person could be dealt with under Section 313 and 314 of the Act. In this view, we allow the appeals and set aside the order of the High Court."

7. It is thus clear that the land, which has been acquired by the corporation for the purpose of the construction of the road, is a public place and the encroachment made thereon by the appellants could be dealt with under section 314 of the Act. In the circumstances I do not find any substance in the appeal and the same is, accordingly, dismissed with costs.

8. Mr.Godbole, learned counsel for the appellants prayed for protection for a period of six weeks. Though Mr.Xavier, learned counsel for the corporation opposed the prayer, I am inclined to grant protection as prayed for. Order accordingly.

(D.B.Bhosale, J.)